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301, 39 N. E. 1068, 27 L. R. A. 724, 45 Am. St. Rep. 615. The rule that a landowner is under no obligation to protect trespassers on his property, and that the same rule applies to children of tender years as to adults is supported in: *Ryan* v. *Towar* (1901), — Mich. —, 87 N. W. 644, 55 L. R. A. 310; *Ritz* v. *Wheeling*, 45 W. Va. 262, 31 So. E. 993, 43 L. R. A. 148; *Uttermohlen* v. *Bogg's Run Co.*, 50 W. Va. 457, 40 S. E. 410, 55 L. R. A. 911; and 61 N. J. L. 635, 91 Tex. 60 above; *Railway Co.* v. *Beavers*, 113 Ga. 398, 39 S. E. 82, 54 L. R. A. 314. Some courts hold that a different rule of liability is applicable when infants of tender years trespass and are injured than in the case of adults. *Branson* v. *Labrot*, 81 Ky. 638; *Schmidt* v. *Kansas Distilling Co.*, 90 Mo. 284, 1 S. W. 865; *Mackey* v. *City of Vicksburg*, 64 Miss. 777, 2 So. Rep. 178; *Brinkley Car Co.* v. *Cooper*, 60 Ark. 545, 31 S. W. 154, 57 L. R. A. 724; *Hydraulic Works Co.* v. *Orr*, 83 Pa. St. 332; *Penso* v. *McCormick*, 125 Ind. 116, 25 N. E. 156; *Kopplekom* v. *Col. Cement Pipe Co.*, — Colo. —, 64 Pac. 1047, 54 L. R. A. 284, and note; *Edgington* v. *B. C. R. R. Co.*, — Iowa, —, 90 N. W. 95, 57 L. R. A. 561.

PARTY WALLS—IMPLIED GRANT—RIGHT TO INCREASE HEIGHT OF WALL. —S built a brick building on each of two adjoining lots using a common dividing wall. He subsequently sold one lot to A and the other to B. The entire dividing wall proved to be located upon B's lot. A, without the consent of B, increased the height of the wall. B brought action to compel A to remove the part thus built. *Held*, that the action could not be maintained. *Bright* v. *Allen* (1902), — Pa. —, 53 Atl. Rep. 251.

The buildings having been built by S upon his own lots and severed by sale, the right to an easement in the wall passed by implication regardless of the fact that the building proved to be located upon the lot of B, and, being a party wall, A had a right to increase its height, the original wall not being materially injured or weakened thereby. The court said: "Where there is an implied grant of an easement of a party wall the easement must be according to the nature of the thing, and that nature includes the right to increase the height of the wall and make such other changes as the owner of the dominant tenement may find to his advantage." In most of the cases in which the right to an easement of a party wall has been involved, the dividing line between the two properties has passed through some part of the wall. *Western Nat. Bank's Appeal*, 102 Pa. St. 171; *Partridge* v. *Gilbert*, 15 N. Y. 601. The New York court held that the right to support adheres although the deed of one house include the whole party wall and even two inches beyond, if it appears that the wall is in fact a party wall. *Rodgers* v. *Sinsheimer*, 50 N. Y. 646. GODDARD says that "the right to support is granted by implication in every case where an owner of adjoining houses and land severs the property by sale": LAW OF EASEMENTS, 227. If the wall be in fact a party wall, there can be no question as to the right of either party to raise the wall if it can be done without material damage to the existing wall. *Dauenhauer* v. *Deane*, 51 Tex. 480. But the party raising the wall is liable as an insurer for any loss or damage by so raising it. *Phillips* v. *Boardman*, 14 Allen 147.

PUBLIC OFFICERS—COUNTY COMMISSIONERS—PERSONAL LIABILITY.— While confined in a jail, plaintiff's son was killed by a fire communicated from electric wires placed in the jail for lighting purposes. A statute provided that it should be the duty of the county commissioners to make personal examination of the jail of their county during each session of the board, and to correct irregularities and improprieties therein found. An action was brought by plaintiff against the electric light company, the county com-

missioners, as individuals, and the sheriff, to recover damages for the alleged negligence which caused the death of her son. As to the county commissioners, *Held*, that the duty imposed on the county commissioners was a duty to the public only, and that therefore their failure to properly inspect the electric wiring of a jail, by reason of which the jail caught fire and burned, causing the death of plaintiff's son, gave no cause of action against the county commissioners in their individual capacity. *Miller* v. *Ouray Electric Light & Power Company* (1902), — Colo. App. —, 70 Pac. Rep. 447.

The court bases the above decision on the fact, that, as the duty imposed by statute refers to the care, custody and supervision of public property, the commissioners, in the performance of that duty, come within the class of public officers designated as subordinate governmental officers, whose duty is owing to the public at large, and not to any particular individual. In ascertaining whether a duty imposed by statute is public or private, the courts seem to take largely into consideration how far the legislature may have contemplated the individual liability urged when the duty was imposed, and what the effect of such individual liability will be. It has been held that prison managers are not liable to a prisoner, who, in performing work, loses his hand by a circular saw, *Alamango* v. *Supervisors*, 25 Hun, (N. Y.) 551; nor for an injury to a prisoner, who, on account of refractory conduct, is put into solitary confinement, and suffers because of insufficient food, clothing and fires. *Williams* v. *Adams*, 3 Allen, (Mass.) 171. A recent Nebraska case holds that the duty imposed upon county commissioners to levy a tax voted by a school district meeting is one owing to the public only. *School District* v. *Burress* (1902), — Neb. —, 89 N. W. Rep. 609. See also *Bassett* v. *Fish*, 75 N. Y. 303. In the case of officers charged with the duty of making and repairing highways and bridges, the courts show a tendency to uphold a much enlarged liability. *Hover* v. *Barkhoof*, 44 N. Y. 113; contra, *Worden* v. *Witt* (1895), — Idaho —, 39 Pac. 1114. Excepting any analogy between the principal case and the cases involving the liability of highway commissioners, it would seem that this case was decided in accordance with sound reasoning and a preponderance of authority. As to the doctrine of liability of public officers to private actions, see notes to *County Commissioners* v. *Duckett*, 83 Am. Dec. 557, and *Robinson* v. *Chamberlain*, 90 Am.Dec. 725.

SALES—CROPS TO BE GROWN—ASSUMPTION OF RISK.—The owner of an orchard sold "all the oranges my trees may produce in the years 1899 and 1900." The contract stipulated that the "purchaser assumes all risks." Before the first crop matured the trees were killed by frost. In an action to recover the consideration paid, *Held*, there could be no recovery and the purchaser was liable for the balance of the price unpaid. *Losecco* v. *Gregory* (1902), 108 La. —, 32 S. Rep. 985.

Where the contract contemplates the continued existence of a particular thing, its destruction rendering performance impossible discharges the contract; BEACH, MODERN LAW OF CONTRACT, Sec 773. But in this case the clause "assumes all risks" was construed to mean not the usual, known, ordinary risks but risks of whatever kind, ordinary and extraordinary, and the sale to be not of a future crop but of the mere hope of one. Somewhat analogous to this are the cases in which goods are sold "with all faults," meaning faults which that particular class or kind of goods might have; *Whitney* v. *Boardman*, 118 Mass. 242; MECHEM ON SALES, §§ 933, 1340.

SALES—RESERVATION OF TITLE—ACTION FOR PRICE.—Plaintiff sold and delivered tombstones to defendant under a contract providing for payment on delivery, but stipulating that title should remain in the vendor until payment.